



October 4, 2012

Fran Sant  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

**Re: APA Washington's Comments on SEPA Rule Making Round 1: Preliminary Draft proposed WAC 197-11 revisions**

Dear Ms. Sant:

The Washington Chapter of the American Planning Association submits the following comments on the preliminary draft proposed WAC 197-11 revisions addressing categorical exemptions, optional changes to the SEPA checklist, and notice and documentation procedures.

Categorical Exemptions: While some of the minor new construction thresholds would be raised considerably compared to current levels, they do not appear to be unreasonably high when viewed from a policy perspective (i.e., reducing impediments to land use development in appropriate locations). Overall, we support these incremental changes to the categorical exemptions.

However, we would like to point out items on the adjoining table showing existing and proposed/optional exempt levels for the conceptual alternatives and ask for clarification.

There appears to be a typographical error in Tier 2/Non UGA for the Office, School, Commercial category – the 125k should probably be 12k. In addition, for Proposal B it is not clear if the “Tier 2 Non UGA” applies to all non-UGA/rural areas or is limited to rural areas in GMA counties (and likely MPRs and FCC's as well). The proposed language change in the draft rule indicates that the non-UGA category in Proposal A is limited to GMA counties.

Levels	Current minimum	Proposal A – Add new “Tier 2” optional maximum thresholds; retain existing optional levels as “Tier 1”			Proposal B – Raise current optional thresholds	
		Tier 1 All	Tier 2 UGA	Tier 2 Non UGA	Tier 1a UGA	Tier 1b Non UGA
Single family residential [# of units]	4	20	40	25	25	20
Multifamily residential [# of unit]	4	20	80	25	40	20
Agricultural [sq ft]	10K	30K	40K	60K	30	40
Office, school, commercial + parking [sq ft + # of spots]	4K+20	12K + 40	40K + 120	125K + 40	20K + 60	12K + 40
Landfill or excavation [cu yds]	100	500	1000	1000	750	750

Overall, the exempt levels do not appear unreasonable, particularly for cities/UGAs. However, in regard to the Tier 1b non-UGA category in Proposal B, which seems to apply to all counties (GMA and non-GMA); we suggest a larger spread between the UGA and non-UGA categories. In addition, in the Tier 1a/UGA category, we suggest the number of single family units could be higher.

Furthermore, we are not convinced that the additional procedural requirements for Proposal A are really necessary. Past experience leads us to conclude that such findings and analysis will likely be general and insubstantial, and that the requirement may well invite litigation. The same concerns apply to the repeated use of the word “adequately” in regard to the required findings.

The proposed change in the threshold for electrical facilities would increase the voltage of electrical lines/facilities subject to the exemption from 55k volts to 115k volts, with the limitation that the facilities are constructed within existing improved ROW or developed utility corridors. The rationale is that the 115k reflects modern utility facilities, and the limitations ensure that the exemption applies to already developed areas. We support this change as reasonable; however, we would welcome the opportunity to view comments from experts in the field of electrical systems.

SEPA Checklist: The proposed changes to the checklist would allow for local changes on a case-by-case basis where particular checklist questions are “adequately covered” by local plans, policies or regulations. The rule change would require the lead agency to adopt findings and analysis that explain how a proposed project satisfies the legal authority that is being relied on. Another proposed change specific to non-project actions would allow the lead agency to skip the questions in Part B, and rely on the supplemental checklist for non-project actions (Part D), where the Part B checklist questions are not useful to analyze the proposal. Lead agencies cannot omit or change any checklist questions. While there are some concerns with both the notice and findings requirements, overall we find these changes to be reasonable.

We agree that for non-project proposals, some of the questions on Part B of the checklist are either not relevant or are not framed so as to be relevant. In practice, it is quite common for an applicant/lead agency to respond to many checklist questions by saying something like “the proposal is a non-project action and does not involve any construction or disturbance, etc.”, or that the question is “not relevant; please refer to the supplemental checklist for non-project actions.” Part D is much more aligned with a planning or regulatory project. Furthermore, the Part D non-project checklist is overly general and probably overdue for review and possible updating.

One further caveat: some jurisdictions and practitioners consider site-specific rezones to be non-project actions, or hybrid project/non-project actions. Thus, we suggest that the proposed non-project checklist provision should not apply to site-specific rezones.

Regarding the checklist change for project actions, we have some concerns. On the one hand, a purpose of the checklist is to distill basic information about a project in an abbreviated form so citizens and officials can understand it and determine its impacts. If that information is omitted and/or substituted for with a regurgitation of local code provisions or state law, some basic information about projects will become harder for ordinary citizens to dig up. On the other hand, we appreciate the futility of summarizing a lot of information about an environmental topic -- for example, typical soil clean-up for an underground storage tank, which is controlled by state law -- which is not really a significant SEPA issue and which will be controlled by another agency. In current practice, it is not uncommon for checklist preparers to answer questions in the manner permitted by the proposed rule change.

On balance, we support the proposed change as reasonable. As drafted, it states the agency "may" identify instances where questions are adequately covered, so there is still local discretion. The rule change would require the lead agency to conclude whether the proposal would have a significant impact on the environment. And it does not allow a lead agency to ignore or omit checklist questions; so this proposal would not result in multiple, locally tailored checklist forms.

In closing, note that our comments are focused on Proposals A and B. Proposal C was posted to Ecology's website just as this letter was being finalized. Based on a quick review of Proposal C, it appears to be a hybrid approach which arranges exemption tiers and threshold levels somewhat differently than A and B. Although it is not mentioned directly in our comments, it's similarities make many of our comments applicable to it as well.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ivan Miller", with a long horizontal flourish extending to the right.

Ivan Miller, AICP  
President-Elect, Washington APA  
206-464-7549

cc: Tom Clingman, Department of Ecology

Josh D. Peters, AICP, Esther Larsen, J.D., Co-Chairs, APA Washington Legislative Committee